

Message Text

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PAGE 01 STATE 133910
ORIGIN L-03

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DRAFTED BY L/EUR:JWILLIS:SL
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L/UNA:DSTEWART
EUR/SOV:MGARRISON
IO/UNP:LHAGE

-----119523 260654Z /15

R 252219Z MAY 78
FM SECSTATE WASHDC
TO USMISSION USUN NEW YORK
INFO AMCONSUL LENINGRAD
AMEMBASSY MOSCOW

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E.O. 11652: N/A

TAGS: PDIP, UR

SUBJECT: SUIT FILED AGAINST SOVIET MISSION OVER MALIK
AUTO ACCIDENT OF MARCH 14, 1967

REF: (A) USUN 1913, (B) STATE 109659

1. PURSUANT TO REQUEST IN REFTTEL (A), DEPT HAS AGAIN
REVIEWED POSITION REFLECTED IN REFTTEL (B). WHILE
SENSITIVE TO THE CONCERNS RAISED IN REF (A), WE HAVE
DETERMINED THERE IS NO WAY TO AVOID APPLICATION OF
PROCEDURAL ASPECTS OF P.L. 94-583 TO UN MISSIONS.

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2. FOR DEPT TO MAKE A DETERMINATION OF SOVEREIGN
IMMUNITY AND SUBMIT IT TO A COURT WOULD BE CONTRARY
TO ONE OF THE PRIMARY OBJECTIVES OF THE STATUTE. UN
MISSIONS HAVE BEEN FULLY APPRISED OF THIS OBJECTIVE
AND EFFECT OF THE STATUTE. IN CIRCULAR NOTE OF
FEBRUARY 17, 1977, DEPT INFORMED ALL UN MISSIONS THAT

"THE NEW STATUTE PRECLUDES THE DEPT OF STATE FROM MAKING DECISIONS ON STATE IMMUNITY. SUCH DECISIONS MUST BE MADE EXCLUSIVELY BY THE COURT. THUS, WHEN THE LEGISLATION TAKES EFFECT ON JANUARY 19, 1977, THE DEPT WILL NOT BE ABLE TO CONTINUE ITS PRIOR PRACTICE OF ENTERTAINING DIPLOMATIC REQUESTS TO DETERMINE

QUESTIONS OF SOVEREIGN IMMUNITY, OR OF CONVEYING SUCH DETERMINATIONS OF IMMUNITY TO AN AMERICAN COURT..."

3. A LETTER FROM THE LEGAL ADVISER TO THE ATTORNEY GENERAL, WHICH WAS ATTACHED TO THAT CIRCULAR NOTE, STATED, "THE DEPT OF STATE WILL NOT MAKE ANY SOVEREIGN IMMUNITY DETERMINATIONS AFTER THE EFFECTIVE DATE OF P.L. 94-583. INDEED, IT WOULD BE INCONSISTENT WITH THE LEGISLATIVE INTENT OF THE ACT FOR THE EXECUTIVE BRANCH TO FILE ANY SUGGESTION OF IMMUNITY ON OR AFTER JANUARY 19, 1977."

4. FYI: SOVIET EMBASSY HAS INQUIRED OF THE DEPARTMENT ABOUT THIS LAWSUIT. WE WILL BE MEETING WITH EMBASSY OFFICERS TO EXPLAIN APPLICATION OF U.S. SOVEREIGN IMMUNITY LEGISLATION AND WILL REPORT TO USUN ON THAT DISCUSSION. END FYI.

5. PLEASE PROCEED TO DELIVER NOTE PER REF (B) TO LIMITED OFFICIAL USE

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SMUN AND ADVISE US WHEN YOU HAVE DONE SO. CHRISTOPHER

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NNN

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